

EXHIBIT A

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1 UNITED STATES DISTRICT COURT
2 DISTRICT OF MASSACHUSETTS
3 MDL NO. 1456
4 CA NO. 01-12257-PBS
5

6 IN RE:
7 AVERAGE WHOLESALE PRICE
8 PHARMACEUTICAL LITIGATION
9

10 BEFORE: The Honorable Patti B. Saris
11

12 STATUS CONFERENCE
13
14

15 John Joseph Moakley United States Courthouse
16 Courtroom No. 13
17 One Courthouse Way
18 Boston, MA 02210
19 Monday, March 8, 2004
20 3:07 P.M.
21

22 Cheryl Dahlstrom
Official Court Reporter
United States District Court
595 Main Street, Room 514
Worcester, MA 01608-2076
Mechanical Steno - Transcript by Computer

Otherwise, whatever schedule you set, we're going to

2 be where we are now. We just really haven't gotten
very far,

3 I hate to report to the Court, because of a time lapse.
It

4 works both ways. They're not happy with our
responsiveness.

5 The rule applies to us as well. I have a few other
things

6 like this.

7 THE COURT: I'm glad you reminded me of that.
I do

8 think -- one of the concerns I've had is on this issue
of

9 ERISA preemption, not really knowing what's out there,
what

10 the plans are, how much the plans will affect damages.
What

11 are the different kinds of plans? Are they hinged on
AWP?

12 Aren't they?

13 Normally, I'm not sympathetic to class
discovery. In

14 this case it may be critical to understanding not just

15 preemption issues but also what's typical. And so I do
think

16 you need to be responsive to producing plans at the
very least

17 or a few -- I don't even know if there are different
kinds of

18 ERISA plans even among the plaintiffs.

19 MR. BERMAN: All our plans are plans to --
almost all

20 of them have been deposed and are producing documents
already.

21 THE COURT: All right. If there are a few --
I don't

22 know. I assume you're not going to take a deposition
of every

23 ERISA plan in America.

24 MR. WISE: No. I can answer that question no.

25 THE COURT: I'm just simply saying it may be
helpful

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That's 1 to find out if these plans are typical of other plans.
people 2 different from -- I'm not authorizing discovery of the
that's a 3 who have cancer who are getting the drugs. I think
defendants are 4 different situation, and I don't believe that
it's 5 looking for that. But I think the different -- while
6 rare, I think this wouldn't be a bad case for it.

7 MR. BERMAN: We agree that this is a case
where there 8 has to be some discovery, a fair amount of discovery,
before 9 the class motion is ripe, both sides.

10 THE COURT: Right. All I'm saying is you had
a 11 motion to preclude class discovery. While I certainly
will 12 grant that with respect to anybody who's sick and
receiving 13 drugs directly as part of a Medicare Part B, I think
the plans 14 themselves are able to protect themselves. And they're
15 usually not confidential, right? Aren't they usually
16 distributed to their members? There's nothing that I
can 17 imagine that would be a problem with that.

18 MR. WISE: It's not in our interest to be
burdensome 19 to that community. What we want to do is just develop
enough 20 information so we can present a sample of what --

I 21 THE COURT: I think that's appropriate because
I was 22 remember looking at the case law on it. To some extent
here 23 not sure what the plans would provide. I think no one
24 really probably was at that time other than the named
25 plaintiffs. What's out there?